ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Provision of Directory Listing Information	)	
Under the Telecommunications Act of 1934,	)	CC Docket No. 99-273
As Amended	)	
	)	

WORLDCOM's OPPOSITION TO PETITIONS FOR RECONSIDERATION

Pursuant to the Federal Communications Commission's ("Commission") *Public Notice* released on April 6, 2001, (DA 01-764), WorldCom, Inc. ("WorldCom") hereby submits its Opposition to the Petitions for Reconsideration filed in the above-captioned docket.

INTRODUCTION

On January 23, 2001, the Commission released its First Report and Order in the above-captioned matter.[1] In the *Directory Listing Order*, the Commission determined, in part, that pursuant to 47 U.S.C. § 251(b)(3), Local Exchange Carriers ("LEC") must offer nondiscriminatory database access to competitive directory assistance providers.[2] The Commission thereby extended the same rights associated with nondiscriminatory access to directory assistance listing ("DAL") databases for certain competitive directory assistance ("DA") providers in this Order as it did for CLECs in its

[1] *Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended,* First Report and Order, CC Docket No. 99-273, (2001) (*Directory Listing Order*).

previous Orders.[3] Consequently, the Commission specifically found that the use of the DAL databases, obtained by competitive DA providers pursuant to Section 251(b)(3) of the Act, is not limited to the provision of DA. The Commission further clarified that the providing LEC does not have "veto power" over how this information is used by such entities.[4]

On March 23, 2001, Qwest Corporation ("Qwest") and SBC Communications, Inc. ("SBC") jointly with BellSouth Corporation ("BellSouth") filed Petitions for Reconsideration ("the Petitions") of this matter to the Commission. Qwest claims that the statutory language had an implied "purpose" restriction associated with the provision of this information, and that consumers consider DAL information to be private.[5] SBC and BellSouth in a joint petition argue that, although the statute places no restrictions on the use of this information, and even where this Commission or the states have not restricted the use, the providing LEC should be allowed to restrict the use of DAL.[6]

The Commission, in its *Directory Listing Order,* consistent with its previous orders, correctly interprets the statutory provision not to impose limitations on the use of

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[2] The Commission does not address in this Order whether DA providers that do not fall under 251(b)(3), would nevertheless be entitled to DAL pursuant to sections 201(b) and 202(a) of the Act. *See Directory Listings Order*, p. 3.

[3] *See, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-96, Second Report and Order and Memorandum Opinion and Order (1996)(*Local Competition Second Report and Order*), vacated in part, People of California v. FCC, 124 F.3d 934 (8th Cir. 1997), rev. AT&T Corp. v. Iowa Util. Bd., 119 S.Ct. 721 (Jan. 25, 1999). *See also, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended,* CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking (1999)(*SLI/DA Order and Notice*). In its *Local Competition Second Report and Order* and the subsequent *SLI/DA Order and Notice*, the Commission defined how the nondiscriminatory access provisions of Section 251(b)(3) should apply to all LECs in providing DAL information to competing providers of telephone exchange service and toll service, including Competitive Local Exchange Carriers ("CLECs").

[4] *Directory Listing Order*, paras. 28 - 29.

[5] Qwest Petition, pp. 1-3.

[6] Joint Petition, p. 1.

DAL, but rather to require nondiscriminatory access. The petitioners do not raise any new facts or issues that were not previously considered and addressed by the Commission.

Finally, SBC and BellSouth argue that providing LECs are not required to provide nondiscriminatory access to DA listings in a situation where a LEC purchases local listings from another LEC. This argument is unsupported by the *Directory Listing Order* and is an attempt to extend the Order too far. Since the incumbent local exchange carriers still exercise such near if not total monopoly power in the local market, the competitive DA providers need the protections afforded by § 251(b)(3) of the Act which requires the nondiscriminatory access of this data.

Thus, the Petitions should be denied in their entirety.

I. THE ORDER ADDRESSES RESTRICTIONS ON THE USE CONSISTENT WITH THE DEFINITION OF NONDISCRIMINATORY ACCESS.

The Commission, in its *Directory Listing Order,* concluded that competing DA providers that are certified competing LECs, furnish call completion services (irrespective of their CLEC status), or act as agents of a CLEC, are entitled to nondiscriminatory access to DAL databases pursuant to Section 251(b)(3). Consistent with its previous orders, the Commission declined to adopt a rule that would allow the providing LEC to restrict the use of the DAL information obtained pursuant to section 251(b)(3), even where the entity obtains it in an agency capacity. The Commission further rejected ILEC arguments " . . . that maintain a competing DA provider may not use the DA database for purposes other than providing directory assistance." The Commission found that section 251(b)(3) imposes no such limitation and " . . . declined

to place additional restrictions on the use of the information that are without basis in the statute."[7]

Qwest claims that the statutory provision has an implied "purpose" restriction.[8] The Commission has considered and correctly rejected the argument that the statute restricts the use of DAL to DA purposes. As the Commission stated "[s]ection 251(b)(3) imposes no such limitation on LECs, their affiliate DA providers, or CLECs, and the commenters have offered no basis in the Act or our rules for imposing such a restriction on competing DA providers."[9] Qwest does not offer any *new* facts to support a contrary conclusion. In fact, Qwest acknowledges the statutory provision does not contain specific language that restricts the use of this information.[10] The statutory provision does, however, *explicitly* require access to be provided in a nondiscriminatory manner. Not surprisingly, Petitioners do not provided a statute or Commission rule limiting the use of this information by *providing* LECs solely for purposes of DA.

SBC and BellSouth requests that the Commission "clarify" that, although the statute does not limit the use of this information to DA purposes, the statute only provides access for DA purposes.[11] The Petitioners want to be able to continue their control over DAL by placing restrictions on their competitors' ability to use this information for other purposes. The Petitioners fail to explain, however, how a provision that provides for nondiscriminatory access, without specifying limitations, could be read to allow the providing party to restrict use in a manner that the providing party itself is not restricted by state or federal law.

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[7] *Directory Listing Order*, paras. 28 – 29.
[8] Qwest Petition, p. 3.
[9] *Directory Listing Order*, para. 29.
[10] *Id.*

Nonetheless, the Commission, in the *Directory Listing Order*, has already rejected this notion, by specifically clarifying that, regardless of whether the information is being provided to the carrier or its agent, the providing LEC does not have "continuing veto power" over how this information is used. Though the Petitioners may claim "ambiguity" and "internal inconsistencies" on this point, the Commission was perfectly clear. "Once carriers or their agents obtain access to the DA database, they may use the information as they wish, as long as they comply with applicable provisions of the Act or our rules."[12] The Commission also reaffirmed its recognition of the power of the states to impose certain restrictions as long as they are consistent with the Act in ensuring that access to the DAL information is nondiscriminatory.[13]

Petitioners claim that previous Commission orders implied that the concept of nondiscriminatory access was limited to serving DA needs. The Commission, however, was very clear in the *Local Competition Second Report and Order,* in its discussion of the state's ability to place restrictions on use consistent with the Act, as reaffirmed in the *Directory Listing Order,* that nondiscriminatory access principles apply even if the use at issue is not DA.[14] Moreover, contrary to Petitioners assertions, the Commission did not reduce the providing LECs' obligation to provide nondiscriminatory access simply by describing one manner in which consumers would be effected by this provision.[15] The Joint Petition also misuse language in the *Bell Atlantic 271 Order*[16] discussing the

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[11] Joint Petition, p. 3.
[12] *Directory Listing Order*, para. 28.
[13] *Id.*, para. 29.
[14] *Local Competition Second Report and Order*, para. 144. *See also, Directory Listing Order*, para. 29.
[15] *See,* Joint Petition, p. 3 and Qwest Petition, pp. 3-4 *citing Local Competition Second Report and Order*, para. 135.
[16] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No.

provision of operator services and DA ("OS/DA") services.[17] Imposing a requirement on the provision of OS/DA services is not tantamount to restricting the use of DAL for DA services. The *Bell Atlantic 271 Order* does not limit the competitors use, or ILEC obligations regarding the provision, of DAL to DA services.

Petitioners further claim that the Commission's decision conflicts with longstanding business practices of using DAL solely for purposes of providing DA services. The ILECs certainly have had the luxury of defining such business practices. However, there was no law that bound them to such practices. Their prior business decisions do not justify placing such a limitation on competitors. Moreover, providing ILECs are not excused of their statutory obligations as a result of conflicting representations or contractual arrangements. Competitors are entitled to the same choices in legal uses of this information as the provider. Allowing providing LECs to bind CLECs and competitive DA providers does not promote competitive alternatives for consumers and would defeat the competitive spirit of the Act by preventing any future innovation.

Petitioners similarly claim that customer privacy expectations justify their imposition of use restrictions.[18] Qwest attempts to extend the Commission's concern

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99-295, Memorandum Opinion and Order (1999)(*Bell Atlantic 271 Order*), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

[17] *See* Joint Petion, pp. 4-5, ftns. 7-8, *citing Bell Atlantic 271 Order,* para 353.

[18] Ironically, Joint Petioners also claim that use of DAL databases for the directory publishing would be contrarty to the statutory scheme, in particular section 222(e). The Commission specifically found, in discussing the differing regulatory classifications drawn by Congress for DA and directory publications, that the **pricing structure** for DA and access to associated databases should remain distinct from that of subscriber list information. *Directory List Order*, para. 37. Despite the Commission's finding and their own acknowledgement of the differing statutory scheme, SBC continues to use rates suggested by the Commission for directory publishing to justify its rates for DAL information. In Texas, for example SBC advocated adoption of rates of $0.04 per listing and $0.06 per listing update as the DAL rate. *See* Southwestern Bell Telephone Company, State of Texas DA Listing Service Tariff, section 1.9.2, effective Feb. 1, 2001. *See also* Post-hearing Brief of Pacific Bell Telephone Company, California PUC Application 01-01-010, pp. 86-87 (Filed Apr. 21, 2001).

regarding disclosure of billing information in the *BNA Orders*[19] to claim that the Commission found "a broad privacy expectation" or "need for confidential treatment of name, address, and telephone number."[20] On the contrary, the Commission, in it *CPNI Order on Reconsideration,* specifically found that customer's name, address, and telephone number are not CPNI.[21] Thus, this information is defined in terms of public, not private, information.[22] Moreover, LECs should not be the purveyors of such restrictions. Such consideration must be weighed against the consumer benefits from competition.[23] As the Commission correctly decided, these decisions must be left to this Commission or state commissions, and applied in a nondiscriminatory manner.

Furthermore, the *Directory Listing Order*, as well as previous Commission Orders, addressed the specific privacy concerns raised by the petitioners regarding unlisted numbers and use of DAL for telemarketing. The Commission clearly states that competitors receiving LEC DA information would be held to the same legal standards as the providing LEC with respect to the types of information that they could legally release to third parties. The Commission also reaffirmed its holding in the *Local Competition*

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[19] *See, In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use of Calling Cards*, CC Docket No. 91-115, Second Report and Order (1993)(*BNA Order*); *In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use of Calling Cards, Petitions for Reconsideration of US West Communications, Inc.*, CC Docket No. 91-115, Third Order on Reconsideration (1996)(*BNA Reconsideration Order*)("*BNA Orders*").

[20] Qwest Petition, p. 8. It is ironic that Qwest repeatedly cites to the *BNA Order* to support its privacy argument, since in that proceeding US West asserted there was no privacy expectations regarding this information. *See BNA Reconsideration Order*, paras. 20 and 22.

[21] *In the Matter of Implementation of the Telecommunications Act of 1996 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended,* CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking (1998)(*CPNI Order*), *vacated sub. nom., U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 120 S. Ct. 2215 (2000), Order on Reconsideration and Petitions for Forbearance, para. 145 (1999)(*CPNI Order on Reconsideration*)("*CPNI Orders*"). Although the status of the *CPNI Orders* is unclear in light on the court's ruling, the Commission's finding on this point was clear and was not the subject of the court's decision.

[22] *See, CPNI Order*, para. 2.

Second Report and Order that states may continue to prohibit, in a nondiscriminatory manner, the sale of this information to telemarketers.[24]

II. INCUMBENT LECs CONTROL OF THE LOCAL MARKET REQUIRES NONDISCRIMINATORY ACCESS TO ALL OF THE DA LISTINGS.

In its Petition for Reconsideration, SBC and BellSouth argue that they are not required to provide nondiscriminatory access to DA listings in a situation where a LEC purchases local listings from another LEC because the purchasing LEC does not exercise market power over this data.[25] This argument is misplaced and is an attempt by SBC and BellSouth to extend the *Directory Listing Order* too far.

In the *Directory Listing Order*, the Commission clearly stated its position that LECs that provide nationwide directory assistance do not need to provide nondiscriminatory access to nonlocal directory assistance databases.[26] The Commission reached this conclusion because it found that the LEC does not have "monopoly power" with respect to obtaining telephone numbers outside of its region.[27] However, this is as far as the Commission went. SBC and BellSouth erroneously attempt to stretch this rationale to DA information in the local market. This "leap" is unsupported by the Order. The Commission clearly stated in this *Directory Listing Order*, that the incumbent LECs "continue to maintain a near total control over the vast majority of local directory listings

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[23] *See CPNI Order*, para. 3.
[24] *Directory Listing Order*, para. 29.
[25] Joint Petition pp. 7-8.
[26] *Directory Listing Order*, para. 32.
[27] *Id.* citing *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of Directory Assistance; Petition of U S WEST Communications, Inc. for Forbearance of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Order 14 FCC Rcd 16252, 16271 (1999) ("*U S WEST Forbearance Order*"). WorldCom notes that SBC and BellSouth understated the Commissions conclusions regarding nonlocal directory assistance information. In the *Directory Listing Order*, the Commission also held that to the extent that a carrier provides national DA information to any other DA

that form a necessary input to the competitive provision of directory assistance.[28] Since the ILECs still exercise such near if not total monopoly power in the local market, and this situation is not the same as the case of nonlocal DA listings, the competitive DA providers still need the protections afforded by § 251(b)(3) of the act which requires the nondiscriminatory access of this data. SBC and BellSouth's attempt to call the local DA listings market a "competitive market" is simply untrue and unsupported by this Commission's findings.[29] SBC and BellSouth's contention that in certain instances more than one facilities-based LEC serves a local area does not change the obligations of the ILEC.

Moreover, with respect to SBC and BellSouth's argument that third parties have the same opportunity to secure DA listings directly from the original source under the same terms and conditions is misleading. The incumbent LEC exercises a level of market power that it can then leverage if and when it must secure agreements with third parties, in exchange for the vast amount of data the LEC has exclusive control over.

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providers, including another LEC, it must then make that same information available to competing providers under nondiscriminatory rates, terms, and conditions. *Directory Listing Order* para. 32.

[28] *Directory Listing Order,* para. 3.

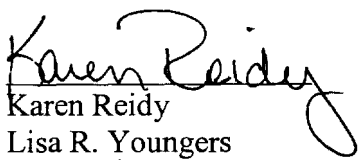
[29] *See* SBC and BellSouth Petition, p. 8.

CONCLUSION

For the foregoing reasons, WorldCom respectfully requests that the Petitions for Reconsideration in the above-captioned matter be denied.

Respectfully Submitted,

WorldCom, Inc.



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Dated: April 30, 2001

CERTIFICATE OF SERVICE

I, Lonzena Rogers, hereby certify, that on this thirtieth day of April, 2001, I have caused to be served by United States Postal Service first class mail and hand delivery a true correct copy of WorldCom, Inc.'s Opposition to Petitions for Reconsideration in the matter of CC Docket 99-273 served on the following:

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